FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.60 of 2005
WITH
Civil Application No.58 of 2005
WITH
Civil Application No.59 of 2005
In
Public Interest Litigation No.39 of 2003

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

C.A.No.60 of 2005

Mr.C.J.Sawant with
Mr.T.Mahatungde for applicants.

Mr.D.J.Khambata i/by Federal
Rashmikant for res.No.1.

Mr.P.M.Patil, AGP for res.Nos.2 and 3 & 4.

Mr.A.V.Anturkar for res.No.5.

WITH

C.A.No.58 of 2005

Mr.P.K.Dhakephalkar with
Mr.T.Mahatunge for applicants.

Mr.D.J.Khambata i/by Federal
Rashmikant for res.Nos.1 & 2.

Mr.P.M.Patil, AGP for res.Nos.3 & 5.

Mr.A.V.Anturkar for res.No.4.

Mr.Rajiv Chavan with Mr.T.C.Kaushik
for res.No.6.

WITH

C.A.No.59 of 2005

Mr.P.K.Dhakephalkar with Mr.t. Mahatugde for applicants.

Mr.D.J.Khambata i/by Federal Rashmikant for res.Nos.1 & 2.

Mr.P.M.Patil for res.Nos.3(1) to 3(3) & 4.

Mr.Rajiv Chavan with Mr.T.C.Kaushik for res.No.3(1) to (5).

CORAM : H.L GOKHALE &
J.P.DEVADHAR, JJ.
DATED : 7th December 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. These three Civil Applications make a grievance that under the garb of implementing the order passed by the High Court on 19th September 2005, the Mahabaleshwar Municipal Council is taking steps to demolish the structures of the Applicants herein. It is submitted by Mr.Sawant, learned Counsel appearing for the Applicants, that all these structures are existing prior to 1985 when the development

plan for this area came into force. Independent of that, he submits that no hearing has been afforded to the Applicants herein.

3. Mr.Anturkar, learned Counsel appearing for the Mahabaleshwar Municipal Council, has tendered a copy of the notice given to one Mr.Abdul Mohd. Dange, Applicant No.6 in Civil Application No.60 of 2005. This notice / order refers to the High Court order dated 19th September 2005 in Writ Petition No.7308 of 2002 passed by a Division Bench of this Court as also earlier order dated 18th November 1998 in Writ Petition No.2754 of 1997. It further states that those orders have already been placed on the Notice Board and the names of the parties, who have made unauthorised constructions, have also been put up on the Notice Board. The order further states

that the Municipal Council is duty bound to remove these unauthorised constructions as per High Court orders. Therefore, this notice calls upon the persons concerned to remove those structures, failing which they will be removed on or after 9th December 2005.

4. Mr.Anturkar states that according to his instructions, proper procedure had been followed prior to the issuance of this notice. However, he fairly states that this order does not disclose any such prior steps taken by the Municipal Council. He makes this statement on the instructions of the officers concerned of the Mahabaleshwar Municipal Council, who are present in Court.

5. Inasmuch as this order / notice does not indicate any hearing to the persons concerned, in our view, this notice / order

in the case of Abdul Mohd. Dange, Applicant No.6 in Civil Application No.60 of 2005, will have to be quashed and set aside. We take the copy of this order on record. Accordingly, the notice / order in the case of Abdul Mohd. Dange, Applicant No.6 in C.A. No.60 of 2005 is quashed and set aside.

6. Mr.Anturkar further states that similar orders have been passed in the case of the persons who have filed these three Civil Applications. In view of this statement, similar orders which are issued to all the Applicants involved in these three Civil Applications will stand quashed and set aside.

7. As regards Civil Application No.58 of 2005, all the Applicants mentioned in this Civil Application are residing in an

area known as "Ramgad". Mr.Anturkar appearing for the Mahabaleshwar Municipal Council states, on the instructions of the Chief Officer, who is present in Court, that this Ramgad is not part of the green area of Mahabaleshwar Municipal Council. This statement is made after his attention is drawn to para-28 of the order dated 18th November 1998 passed in Writ Petition No.2754 of 1997.

8. Mr.Khambata, learned Counsel appearing for Bombay Environmental Action Group, states that as far as the original petitioners are concerned, they also do not have any particular grievance against these Applicants.

9. In view of what is stated above, the Mahabaleshwar Municipal Council will now be liable to

issue notices to these Applicants. The Municipal Council will afford a proper hearing to them and thereafter pass an order in accordance with law. All the submissions of the Applicants including the one which they have raised now, namely, that their structures existed prior to the development plan coming into force will be available to them and these submissions will be considered by the officer concerned who will pass a speaking order thereafter.

10. Needless to state that no action of demolition will be resorted to until any such hearing has been afforded and appropriate order is passed thereafter. In the event the final order is adverse to the Applicants, the same will not be brought into force for a further period of four weeks.

11. Mr.Anturkar states that the hearing would be completed to the extent possible within six months hereafter. The same may be completed by end of June 2006. The Applicants will co-operate with the officer concerned in the matter.

12. All the above three Civil Applications stand disposed of with this order.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)